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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,976	09/06/2001	Naotaka Tsunoda		7871

7590

12/01/2005

Jay H. Maioli
Cooper & Dunham
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

HARVEY, DIONNE

ART UNIT PAPER NUMBER

2646

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,976

Applicant(s)

TSUNODA ET AL

Examiner

Dionne N. Harvey

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) 0 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1 and 2** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Anderson (US 3,661,225)** in view of **Brito (US 5,136,639)**.

Regarding claim 1, in **figure 4**, Anderson teaches a headphone device comprising: an ear pad worn on an exterior of an ear on the head of a user and including a cushion **16** having a skirt member **16a**; the skirt member **16a** reading on "removable facing" and being bendable for facilitating attachment to and removal from the headphone housing **14**; the facing includes a "fitted portion", interpreted as that portion which engages a peripheral portion of housing **14**; said fitted portion being seamed to a "covering portion", which is interpreted as that portion of skirt **16a** which lies adjacent the head of the wearer, to form a "hinge" to facilitate removal from said cushion; and

A housing **14,14a** formed with a groove shaped fitting portion **15** adapted to hold the fitted portion **16a** of the removable facing for attaching the ear pad to said housing via removable facing **16a**, wherein the ear pad **16** is detachable from said housing **14**, and said removable facing **16a** is detachable from said housing **14**.

Anderson does not expressly teach that the housing includes a speaker unit. However, the Examiner takes Official Notice that the construction of hearing protection equipment having communication functions is well known in the art and would have been obvious for the purpose of allowing individuals working in high noise environments to communicate with co-workers. See Wilcox reference, cited below.

Anderson does not expressly teach that the removable facing **16a**, is detachable from said cushion **16**.

Brito teaches, In **figure 10**, an ear pad comprising a cushion **(16)** and an outer covering **(38)** for the cushion. In **lines 15-16** of the **Abstract** and in **column 5, lines 52-65**, Brito teaches that a variety of coverings **(38)** may be placed upon the cushion **(16)** for the purpose of facilitating easier cleaning of the covering, for the purpose of disposal and subsequent replacement with a new covering, OR for the purpose of exchange for another covering having a more distinctive or complementary appearance. In **column 5 lines 52-60**, specifically **lines 57-60**, Brito teaches that the covering for the cushion may be disposable, hence reading on "facing is detachable from said cushion" as claimed.

Furthermore, in **column 5, lines 60 to column 6, line 31**, Brito teaches a variety of mounting arrangements for attaching the cushion **(16)** and covering **(38)** to the telephone receiver. Brito teaches that the cushion w/ covering may be mounted by glue, double faced tape, a snapping arrangement, an elastic strap, belt-type buckle arrangement, Velcro- hook-n-loop fastening mechanism and more. More than one of the above mounting arrangements will facilitate a detachable mounting of the ear cushion

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(16) and covering (38) to the telephone receiver so as to permit the user to remove the covering (38) for disposal, cleaning or exchange, thereby reading on "said removable facing is detachable from said cushion", as claimed..

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Anderson and Brito, thereby providing a facing which is detachable from the cushion member, for the reasons previously mentioned.

Regarding claim 2, **Figure 4** of Anderson teaches a headphone wherein an external shape of the cushion of said ear pad is annular/circular.

Response to Arguments

Applicant's arguments with respect to claims 1-2 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wilcox US 4,972,491 teaches an ear protector with speaker.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne N. Harvey whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dionne Harvey


SUHAN NI
PRIMARY EXAMINER